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9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 In re
13 EVANDER FRANK KANE,
14 Debtor.

Case No. 21-50028-SLJ

Chapter 7

15 **EVIDENTIARY OBJECTIONS TO**
16 **DECLARATION OF EVANDER FRANK**
17 **KANE IN SUPPORT OF OPPOSITION**
18 **TO HOMESTEAD EXEMPTION FILED**
19 **BY ZIONS BANCORPORATION, N.A.**

Date: June 9, 2021

Time: 2:00 p.m.

Place: Via Zoom Video Conference

Hon. Stephen L. Johnson

Zions Bancorporation, N.A. (“Zions”) submits the following evidentiary objections to the Declaration of Evander Frank Kane (“Kane Declaration”) which declaration was filed in support of Kane’s Opposition (Dkt. 146) to Zions’ Objection to Kane’s Homestead Exemption (Dkt. 74).

#	<u>Testimony:</u>	<u>Objections:</u>
1.	Kane Decl., ¶ 3, page 1, lines 27-28: “I did not move to California to avoid creditors or because of its exemption laws.”	Relevance (Fed. R. Evid. 401; 402) The quoted testimony is not relevant.
2.	Kane Decl., ¶ 4, page 2, lines 1-3: “We purchased the single-family home located at 2301 Richland Ave., San Jose, California (the ‘Residence’) in August 2020 for \$3,030,000.”	Lack of Foundation (Fed. R. Evid. 602) This testimony lacks foundation and misstates the record. Kane’s assertion that “we” purchased the Residence is contradicted by the recorded grant deed transferring the Residence to Kane and his wife’s Florida limited liability company in August 2020 which later transferred the Residence to Kane and his wife on January 8, 2021 (Warrington Decl., Dkt. 74-1, Exhs. 3-4).
3.	Kane Decl., ¶ 4, page 2, lines 3-5: “The funds for the down payment came partially from my salary with the Sharks and partially from a loan secured against property I own in Vancouver, Canada (the ‘Canadian Properties’).”	Lack of Foundation (Fed. R. Evid. 602) Kane’s testimony regarding the source of the funds is unsupported by a proper foundation. Relevance (Fed. R. Evid. 401; 402) The quoted testimony is not relevant insofar as Kane fails to state what amount or portion of the down payment was purportedly sourced from his salary.
4.	Kane Decl., ¶ 5, page 2, lines 6-7: “I used a portion of my salary bonus from July 2020 to pay off a then-existing junior loan on the Canadian Properties which had become due.”	Lack of Foundation (Fed. R. Evid. 602) Kane’s testimony is unsupported by a proper foundation. Best Evidence Rule (Fed. R. Evid. 403/1002) Kane is testifying about the content of paycheck stubs and loan transaction documents without authenticating these documents or introducing them into the record.

#	Testimony:	Objections:
5.	<p>Kane Decl., ¶ 5, page 2, lines 7-9:</p> <p>“After paying off the existing second loan, I obtained a new loan secured by a junior deed on the Canadian Properties for approximately \$435,000 USD.”</p>	<p>Lack of Foundation (Fed. R. Evid. 602)</p> <p>Kane’s testimony is unsupported by a proper foundation. Kane’s testimony contradicts his sworn Schedule D reflecting a \$600,000 USD loan to 1000568 B.C. Ltd. instead of a \$435,000 USD loan. Dkt. 18 at 2-3. Kane fails to explain his contradictory testimony.</p> <p>Best Evidence Rule (Fed. R. Evid. 403/1002)</p> <p>Kane is testifying about the content of loan documents and lien priorities without authenticating these documents or introducing them into the record.</p>
6.	<p>Kane Decl., ¶ 5, page 2, lines 9-10:</p> <p>“I combined the loan proceeds with funds left from my salary bonus to make a down payment of approximately \$705,000 on the purchase of the Residence.”</p>	<p>Lack of Foundation (Fed. R. Evid. 602)</p> <p>Kane’s testimony concerning the purported sources of an approximate \$705,000 down payment is unsupported by a proper foundation. Kane fails to establish how he has knowledge of these facts or what he is basing his testimony on.</p> <p>Best Evidence Rule (Fed. R. Evid. 403/1002)</p> <p>Kane is testifying about the content of loan documents, paycheck stubs, salary amounts, and purchase price information without authenticating any of the relevant documents or introducing them into the record.</p>
7.	<p>Kane Decl., ¶ 8, page 2, lines 18-19:</p> <p>“The Exemption Settlement was reached after the Trustee obtained an opinion from a local realtor valuing the Residence at \$3,275,000.”</p>	<p>Lack of Foundation (Fed. R. Evid. 602)</p> <p>Kane’s testimony is unsupported by a proper foundation. Kane fails to establish how he has knowledge of these facts or what he is basing his testimony on.</p> <p>Best Evidence Rule (Fed. R. Evid. 403/1002)</p> <p>Kane is testifying about the content of an apparent writing—i.e., “an opinion from a local realtor”—without authenticating them or introducing them into the record.</p>

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#	Testimony:	Objections:
		Hearsay (Fed. R. Evid. 801, 802) Kane is testifying about an out of court statement—i.e., “an opinion from a local realtor”—and is offering the purported content of that statement for the truth of the matter asserted. This testimony must be excluded as hearsay without exception.

DATED: June 2, 2021

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By: /s/ Gerrick M. Warrington
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